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Promotion and protection of the rights of children

The sale of children, child prostitution and child pornography

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with resolution 64/146, the report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Najat Maalla M'jid.

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Report of the Special Rapporteur on the sale of children, child prostitution and child pornography

Summary

The present report is being submitted pursuant to General Assembly resolution 64/146 and is the first report submitted to the Assembly by the current Special Rapporteur. It describes the activities undertaken from September 2009 to July 2010 in the discharge of the mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography.

In the context of the tenth anniversary of the adoption of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the present report focuses on remaining challenges with respect to awareness and understanding of these problems and the actions undertaken to address them. The recommendations of the Special Rapporteur set out specific measures to improve the effective implementation of the Protocol: a better understanding and greater awareness for better action.

Contents

I. Working methods and activities

A. Working methods

B. Activities

II. Optional Protocol on the sale of children, child prostitution and child pornography: 10 years later

A. Introduction

B. Knowledge and understanding of the phenomena

C. Activities

D. Recommendations

I. Working methods and activities

A. Working methods

1. In its resolution 64/146, the General Assembly requested the Special Rapporteur on the sale of children, child prostitution and child pornography to submit reports to the General Assembly and the Human Rights Council on the activities undertaken in the discharge of her mandate. The present report is being submitted pursuant to that request. It deals with the activities undertaken from September 2009 to July 2010. Furthermore, in the context of the tenth anniversary of the adoption of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, this report will focus on remaining challenges to improving the effective implementation of the Protocol.

B. Activities

1. Country visits

2. Since her last report to the Human Rights Council in September 2009, the Special Rapporteur has visited the United Arab Emirates (12-18 October 2009) and Senegal (21-30 October 2009). The Special Rapporteur's preliminary observations on these visits are contained in press statements.[1,2] The Special Rapporteur will make an official visit to El Salvador in August 2010 and to the United States of America in October 2010.

2. Human Rights Council

3. In September 2009, the Special Rapporteur submitted her annual report to the Human Rights Council at its twelfth session on the subject of child pornography on the Internet. The report includes reports on her visits to Latvia and Estonia[3] and a summary of her communications to Governments and the replies she received between 1 December 2007 and 30 April 2009.[4] The Special Rapporteur will submit her next annual report to the Human Rights Council at its sixteenth session in March 2011.

3. Conferences, seminars and engagement with civil society

4. The Special Rapporteur also participated as a panellist in numerous conferences and seminars during the period under review: the Rome conference on violence against women, in preparation for the Group of Eight (G-8) summit; the conference of the Organization for Security and Cooperation in Europe (OSCE) on the prevention of modern slavery, held in Vienna; a side event to the commemoration of the twentieth anniversary of the adoption of the Convention on the Rights of the Child, held in Geneva; a United Nations Cultural, Scientific and

[1] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9544&LangID=E (United Arab Emirates).

[2] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9864&LangID=F (Senegal).

[3] A/HRC/12/23/Add.1 and Add.2.

[4] A/HRC/12/23/Add.3.

Cultural Organization (UNESCO) colloquium on street children; the working group on the feasibility of an additional protocol to the Convention on the Rights of the Child on a communications procedure; conference on the cultural rights of the child; the launching of the campaign for the universal ratification of the two additional protocols to the Convention on the Rights of the Child organized in New York by the Office of the Special Representative of the Secretary-General on Violence against Children, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, the Office of the United Nations High Commissioner for Human Rights and the United Nations Children's Fund (UNICEF); a regional workshop on the protection of children affected by mobility in West Africa organized in Dakar by a regional platform of eight agencies and regional non-governmental organizations (NGOs); and a national seminar on legal mechanisms for children organized in Rabat by the Advisory Council on Human Rights. She also visited programmes and met with stakeholders involved in child protection in Montreal and London.

II. Optional Protocol on the sale of children, child prostitution and child pornography: 10 years later

A. Introduction

5. The Optional Protocol on the sale of children, child prostitution and child pornography ("the Optional Protocol") is of course a valuable tool for strengthening the protection of children and efforts to put an end to offender impunity. It would be even more effective if all States would ratify it and strive to implement its provisions effectively.

6. It is the intent of the present report to highlight remaining challenges with regard to knowledge and comprehension of these phenomena and child protection, in order to promote an enhanced understanding and especially to propose specific measures to improve effective implementation of the Protocol: a better understanding and greater awareness for better action!

7. The Special Rapporteur drafted this report on the basis of an analysis of various periodic reports submitted by States to the Committee on the Rights of the Child, the Committee's recommendations and comments, reports submitted by States as part of the Universal Periodic Review, the reports of previous rapporteurs, country visits made by her and her predecessors, reports and studies of United Nations agencies, the Council of Europe and studies by international organizations.

8. Particular attention was paid to follow-up to the recommendations made by the above-mentioned mechanisms as well as to those of the United Nations study on violence against children, the Millennium Development Goals and the Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents of World Congress III against the Sexual Exploitation of Children and Adolescents, held in Rio de Janeiro, November 2008, which commits Governments to pursue a set of specific, time-bound goals to prevent the sexual exploitation of children and adolescents, to put an end to the practice and to protect exploited children.

1. The origins of the Protocol

9. The Optional Protocol was adopted and opened for signature, ratification and accession pursuant to General Assembly resolution 54/263 of 25 May 2000. The Protocol entered into force on 18 January 2002.

10. This Protocol supplements the Convention on the Rights of the Child, which is the key international instrument for the protection of the rights of children, and in particular the right to be protected from all forms of abuse, violence, abandonment and exploitation (see in particular, article 34 of the Convention on the Rights of the Child, which recognizes the right of children to be protected from all forms of sexual exploitation and sexual abuse and that all exploited children are rights-holders under the Convention on the Rights of the Child, especially with regard to recovery and reintegration under article 39).

2. Provisions of the Optional Protocol

11. Article 1 of the Optional Protocol establishes that States parties shall prohibit "the sale of children, child prostitution and child pornography as provided for by the present Protocol".

12. Article 2 defines conduct prohibited by the Optional Protocol and is closely linked with article 3, which lists the actions which, as a minimum, must be "fully covered" under the criminal or penal law of States parties:

- **Sale of children**. Any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration; article 3, paragraph 1 (a) prohibits offering, delivering or accepting a child for the purpose of sexual exploitation; transferring a child's organs for profit; subjecting a child to forced labour; or obtaining consent to adopt a child in violation of applicable international legal instruments on adoption;
- **Child prostitution**. The use of a child in sexual activities for remuneration or any other form of consideration;
- **Child pornography**. Any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

13. The obligations of States parties contained in the Optional Protocol also concern the suppression of these crimes, covering questions such as extraterritorial jurisdiction, extradition and mutual legal assistance, as well as seizure and confiscation of proceeds and goods (articles 4 to 7). Article 8 concerns the protection of victims, article 9 has to do with prevention and article 10 with international cooperation. Implementation of the Optional Protocol must take into account the general principles of the Convention on the Rights of the Child, that is, the right to non-discrimination (article 2); the best interests of the child (article 3); the right to survival and development (article 6); and the right of the child to express his or her own views freely in all matters affecting the child and to have due weight given to those views (article 12).

3. The Optional Protocol and other treaties

14. Other international and regional instruments to which many States are party supplement the provisions of the Protocol, thereby emphasizing the indivisibility and interdependence of rights.

B. Knowledge and understanding of the phenomena

1. Extent and trends over time

15. Numerous studies and situation analyses have been carried out by some States, associations, NGOs and multilateral agencies on violence and some forms of sexual exploitation of children, forced labour and trafficking in children and unaccompanied minors. Data gathering and processing systems have been established in many countries and between certain countries.

16. Thanks to these efforts, more data are now available on long-term trends and specific aspects of some types of sale and sexual exploitation of children, including:

- The practice of sexual exploitation of boys and girls of all ages, and from all backgrounds, in all States and regions;
- An increase in some types of sexual exploitation of children and adolescents perpetrated over the Internet and using new technologies, and facilitated by increased mobility through travel and tourism;
- An increase in sale of children for the purposes of trafficking, sexual exploitation, forced labour and illegal adoption;
- The exacerbation of these phenomena due to poverty, the HIV/AIDS pandemic, conflicts, large-scale natural disasters and displaced persons;
- The gender dimension of sexual exploitation, which has the greatest effect on girls, although there are reports of some cases of sexual exploitation of boys (prostitution, pornography, sexual tourism); very few cases have been reported owing to taboos and laws prohibiting homosexuality;
- The global dimension of increasing clandestine, lucrative global criminal activity, which is also increasingly organized;
- The persistent demand for child sexual services, supported by an environment of tolerance, complicity and impunity.

17. However, the actual extent of all forms of sale (in particular, sale for the purpose of illegal adoption or transfer of organs) and sexual exploitation of children remains difficult to assess, for the following reasons in particular:

(a) The difficulty of interpreting certain concepts and interdependence between certain forms of exploitation

18. The scope of application of the Optional Protocol is not always properly interpreted, and, as a result, neither are its concepts.

Sale of children

19. The actual extent of and long-term trends in the phenomenon of the sale of children as defined in the Optional Protocol are very difficult to assess, on the one hand because interpretation and comprehension of the concepts are not always very clear and, on the other, because there are often links between sale, trafficking, forced labour and the sexual exploitation of children.

Sale of and trafficking in children

20. States have a tendency not to distinguish between the sale of children and trafficking in children, despite the recommendations of the Committee on the Rights of the Child, which clearly stipulate that the two terms should not be used inappropriately.[5] In fact, although trafficking in and sale of children are overlapping concepts, they are not identical, and article 35 of the Convention on the Rights of the Child requires States parties to take measures to prevent trafficking and sale. The Handbook on the Optional Protocol published by the UNICEF Innocenti Research Centre provides clarifications in this regard.

Sale of children for the purpose of sexual exploitation

21. The fact that States often do not distinguish between sexual exploitation and sexual abuse, particularly within the family, has been raised by the Committee on the Rights of the Child[6] and by the Special Rapporteur during country visits. In the context of the Optional Protocol, sexual exploitation covers the use, recruitment or offer of a child for purposes of prostitution or pornographic material or performances.

22. Other practices such as forced marriage that are in effect in certain parts of the world can be considered "sale for purposes of sexual exploitation". One manifestation of this, among others, is that young girls are given as wives to men — often older men — in exchange for money.

Sale of children for the purpose of forced labour and recruitment of children for use in armed conflict

23. Article 3 of the Optional Protocol also specifically requires States parties to prohibit the sale of children for the purpose of their engagement in forced labour and in the worst forms of labour.

24. This includes the "forced or compulsory recruitment of children for use in armed conflict" (pursuant to Convention No. 182 of the International Labour Organization (ILO) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour). The Committee on the Rights of the Child[7] has found that the sale of children for use in armed conflict is covered by this provision of the Optional Protocol. The Committee has also found that the sale of children for use in camel racing can be considered to fall under the prohibition of the sale of children for their engagement in forced labour.

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[5] *Report of the Committee on the Rights of the Child, Sixty-third Session, Supplement No. 41* (A/63/41).

[6] Ibid.

[7] Ibid.

Sale of children for the purpose of organ transfers or illegal adoption

25. Article 3 of the Optional Protocol defines the sale of children for the purpose of organ transfers as "offering, delivering or accepting" a child for the purpose of "transfer of organs of the child for profit".

26. Lastly, article 3 of the Optional Protocol also defines the sale of children for the purpose of illegal adoption as "improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption".

Child prostitution

27. Article 2 of the Optional Protocol defines child prostitution as "the use of a child in sexual activities for remuneration or any other form of consideration". The phrase "any other form of consideration" means that prostitution includes offering sexual services in exchange for goods, services or favours, as well as for money. That includes, for example, the exchange of sexual services for food, lodging or drugs.

28. Sex tourism involving children (the sexual exploitation of children by one or more persons travelling within their own country or to another, usually less developed, country in order to engage in sexual activities with children), while not clearly identified as an offence under article 3 of the Optional Protocol, is mentioned in the preamble and in article 10 on international cooperation. Sex tourism is directly linked to the offences covered by the Optional Protocol because it often involves child prostitution and child pornography (pimps often film children performing services) and may also involve the sale of children.

29. The definition of "child" in article 1 of the Convention on the Rights of the Child also applies to the Optional Protocol. Some countries define a child as an individual under the age of 18, but others take into account the age of criminal responsibility or the age of consent to sexual activity, which may vary between 13 and 16. In countries where prostitution is legal, the sexual exploitation of children who have reached the age of consent is not considered an offence and therefore such children are not identified as victims. In countries where prostitution is illegal, children who have reached the age of criminal responsibility and who are not found to have been the victims of pimps or traffickers are treated as offenders.

Child pornography

30. Article 2 of the Optional Protocol defines child pornography as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes". This may be images showing children engaging in sexual activities with other children or with adults (hard pornography), but it may also be "provocative" images of naked minors that emphasize their sexuality (soft pornography).

31. Images in which various special effects or computer-based techniques are used to replace images of adults with images of children (morphing), or even cartoons, may also constitute pornography. Although such images are artificially created, they appear real and therefore have the same effect on the consumer.

32. Many kinds of media are used: live shows, photographs, films, compact discs (CDs), digital images recorded or distributed over the Internet or on mobile phones, social networks, as well as cartoons. The development of new technologies, which exponentially increases the opportunities to obtain, disseminate and sell this criminal material, has fostered worldwide growth in child pornography. These new technologies considerably broaden the scope of predators' activities by allowing them to stalk, recruit and exploit children all over the world. In chat rooms and blogs, child pornographers take advantage of their anonymity in order to solicit children for sexual purposes (grooming by means of information technology).

Interlinkages to be considered

33. Despite their clear definitions, concepts often overlap. There are many links between the sale of children, trafficking in children, forced labour, child prostitution, sex tourism and child pornography. The exploitation of children for economic purposes often goes hand in hand with their exploitation for sexual purposes. The development of sex tourism almost invariably entails the development of child prostitution and child pornography (some abusers film their victims). In conflict zones, the recruitment of children for armed conflict is very often accompanied by the sexual exploitation of children, especially girls.

Summary

34. The question is not how to categorize these offences, but whether the responses to them, in terms of the protection of children and the punishment of offenders, are adequate and comply with the provisions set out in the various international instruments to which States are parties.

(b) Small number of reports and statements

35. The relatively few statements and reports filed does not reflect the actual extent of these offences and can be explained by the following:

- Inadequacy of some legislation that is not fully harmonized with the international instruments that have been ratified and does not clearly define offences;
- Failure to have recourse systematically to the police and the justice system owing to:
  - lack of proper physical and human resources;
  - the slow pace and cost of judicial proceedings;
  - lack of awareness of the laws among children, families and communities;
  - in some cases, lack of confidence in the justice system;
  - the impunity of some offenders;
  - fear of retaliation, stigma or social exclusion;
  - lingering forms of cultural resistance;
  - recourse to amicable settlement in some rural areas.

- Lack of redress and follow-up mechanisms for the promotion and protection of rights of the child that are easily accessible to all children and guarantee their protection;
- The clandestine nature of these offences.

(c) Scarcity and unreliability of data

36. The actual extent of these offences is not yet known because statistics are scarce and often unreliable owing to the following:

- Large differences in numbers: the figures vary, ranging from a few cases to millions of children affected, based on information received from countries and on studies conducted by various institutions. These are often estimates;
- The quality of the methodology used in analysing the data;
- Inadequate information systems: many countries still do not have centralized information systems that use a clear and harmonized methodology for the gathering and processing of data at the country level;
- Mechanisms for the follow-up and evaluation of the child rights situation are weak; evaluation of the impact of actions undertaken is also weak as a consequence;
- The difficulty of ensuring international and regional coordination of the exchange of information.

Summary

37. The actual scope of the sale of children, child prostitution and child pornography remains difficult to determine. We must step up our efforts to address these gaps, because well-publicized legislation that clearly defines these offences, easy access to the justice system and to redress and follow-up mechanisms for the promotion and protection of the rights of the child, reliable information systems and effective coordination of the exchange of information will improve the prospects of achieving concrete results in the protection of children.

2. Critical factors and vulnerabilities

38. A number of interacting factors increase children's vulnerability to sale and sexual exploitation. These factors are linked to the political, institutional, legislative, socio-economic and cultural context in which a child lives and develops, as well as the global context (see diagram below).

French	*English*
Technologies de communication	Communications technologies
Certaines normes sociales	Certain social standards
Crises humanitaires (conflits, catastrophes naturelles, changements climatiques)	Humanitarian crises (conflicts, natural disasters, climate change)

French	*English*
Pandémie VIH/SIDA	HIV/AIDS Pandemic
Vulnérabilité de certains enfants	Vulnerability of certain children
Demande croissante et criminalité organisée	Growing demand and organized crime
Pauvreté	Poverty
Vulnérabilité	Vulnerability
Familles et communautés	Families and communities
Vente	Sale
Exploitation des enfants	Exploitation of children

(a) Poverty exacerbated by the financial and food crises

39. Poverty remains the primary reason for the sale and sexual exploitation of children. It has been exacerbated by armed conflict, climate change (e.g. desertification, severe flooding), natural disasters and the HIV/AIDS pandemic. According to the 2010 MDG Global Monitoring Report published by the World Bank and the International Monetary Fund, the number of people living on less than US $1.25 per day in developing regions fell from 1.8 billion in 1990 to 1.4 billion in 2005. Nevertheless, new World Bank estimates suggest that the crisis left 50 million more people in extreme poverty in 2009, a number which is expected to rise to 64 million by the end of 2010, mainly in sub-Saharan Africa and East and South-East Asia.

40. Poverty takes an especially heavy toll on children, as evidenced by the following figures cited by UNICEF:[8]

- 8.8 million children worldwide died before their fifth birthday in 2008;
- 4 million newborns worldwide are dying in the first month of life;
- over 500,000 women die each year from causes related to pregnancy and childbirth, leaving a large number of orphans;
- 148 million under-fives in developing regions are underweight for their age;
- 22 million infants are not protected from diseases by routine immunization;
- 1 billion children are deprived of one or more services essential to survival and development;
- 101 million children are not attending primary school, with more girls than boys missing out.

41. In the face of poverty, inaccessibility to basic social services and lack of opportunity, families find themselves unable to ensure the development and safety

[8] UNICEF, *The State of the World's Children*, special edition in commemoration of the twentieth anniversary of the Convention on the Rights of the Child.

of their children. They adopt survival strategies that may endanger their children. Some parents emigrate in search of a better future, leaving their children behind, while some children emigrate on their own initiative or at their family's urging, and are handed over, for a fee, to exploiting individuals who push them into work. These children are more vulnerable to all forms of exploitation and abuse.

(b) Certain social standards

42. It is important to analyse the causal links between social standards and the sale and exploitation of children in order to better understand and address them. "Social standards" encompass the rules of conduct and models of behaviour defined by society.

43. These rules of conduct and models of behaviour are very often particular to a region or country, and reflect significant geographic diversity. They are based on psychological-social-cultural perceptions, which are shaped by the way people view a given issue, and then translated into words, attitudes and behaviours. An analysis of all the studies done on the sexual and/or economic exploitation of children highlights the impact of social standards on the existence and persistence of the problem.

Perception of childhood

44. The definition of a child, as it is set out in the Convention on the Rights of the Child, is not accepted by all. The concept of childhood is often confused with early childhood or even pre-adolescence. In practice, it is the community's attitude towards the physical, psychological and behavioural development of children that determines when a child becomes an adult. Social age is more important than real age: as soon as visible signs of pre-puberty appear, the child is no longer considered a child by society; he or she is expected to act like an adult and, more importantly, society evaluates his or her behaviour on that basis.

45. Therefore, a pubescent child who becomes a victim of sexual exploitation (especially a girl) is not necessarily seen as a victim, but rather as guilty of behaving or dressing provocatively or of a poor upbringing.

Allowing children to have a voice

46. In traditionally patriarchal societies, social stratification according to age does not grant children the status of fully fledged persons. Their opinions are neither respected nor taken into account by the family and the community. Children cannot challenge what adults say, or refuse to carry out their orders. The authority of parents and other adults is sovereign and does not recognize a child's right to express himself or herself, since such expression is considered a sign of poor upbringing and a lack of respect. Children are not considered as individuals; family and the community have primacy.

47. Children assimilate these values and therefore accept, more or less readily, the authority of parents and of older individuals outside the family; some children even appear to seek such authority figures.

Sex education: between tradition and modernity

48. Sexuality remains a taboo subject in many societies. Ignorance, apprehension and embarrassment contribute to parents' unwillingness to talk to their children about sex for fear of arousing their curiosity or encouraging sexual debauchery. The topic of sex is therefore discussed among youth, often of the same sex, between brothers and sisters, and sometimes with teachers (as part of sex education).

49. Increasingly accessible new technologies have exposed children to pornography and inspired and influenced young people's sexual practices. Pornography is becoming the main means of sex education and encouraging the spread of related practices and behaviours.[9] Child pornography networks circulate photos of smiling children in order to trivialize sexual attraction to children and to convince children watching that they are having fun.

Gender discrimination

50. The past few decades have witnessed a growing recognition of the existence of gender-based violence. Such violence, which intensifies in times of conflict or crisis, is often the expression of the status society reserves for women and is also reflected in discrimination in access to all social services, particularly school.

Right to education

51. In many societies, the unequal social status of women continues to contribute to patent discrimination against girls, particularly in poor and rural communities. Girls born in poor households or living in rural communities are at a clear disadvantage in terms of education, owing to persistent attitudes and practices that encourage early marriages and the confinement of young women, and give greater importance to the education of boys over girls.

Early marriages

52. In 2007,[10] more than one third of young women 20 to 24 years old (that is, over 64 million[11]) in developing countries reported that they were married or in union by age 18. Early marriages are twice as common among young girls from poor families and those living in rural areas. Furthermore, these early marriages lead to early pregnancies (14 million young women give birth between the ages of 15 and 19 years old[12]), which endanger the health of the mothers and their children.

53. In some circumstances, early marriage is used as an economic survival strategy by poor families. Girls are given into marriage, often against their will and in exchange for a dowry, in order to settle the family's debts, to acquire land or even to settle disputes between families or clans.

54. Early or forced marriage, which is not considered a form of exploitation, makes young girls more vulnerable to mistreatment and exploitation. It often results

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[9] End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT) International, *Violence against children in cyberspace*, Bangkok, 2005, pp. 52-55 (http://www.ecpat/net/E1/publications/ict/Cyberspace_ENG.pdf).

[10] UNICEF, *Progress for Children*, 2009.

[11] UNICEF, *State of the World's Children*, 2009.

[12] Ibid.

in their leaving school early and prevents them from acquiring the skills that could make them more independent. When girls flee a marriage, they most often find themselves with no education or source of livelihood, separated from their family environment and, therefore, in a situation of great vulnerability in which one of the sole means of survival is prostitution.

Rape and sexual exploitation of girls and women during armed conflict

55. The rape and sexual exploitation of young girls and women have been used as veritable weapons of war during conflict. The physical and psychological consequences are significant for the victims, who often find themselves stigmatized and marginalized and hence more vulnerable.

Feminization of the AIDS pandemic

56. Throughout the world, the epidemiological situation shows an increase in cases of AIDS among the heterosexual population, the percentage being three to eight times higher among women and girls than among men. The greater vulnerability of women to AIDS is due to physiological and biological factors, but also to social, cultural and economic pressures that do not allow them to protect themselves.

Sexual exploitation of boys

57. It must not be forgotten that boys are also victims of abuse and sexual exploitation. Poverty, lack of opportunities and the development of sex tourism are the main causes. Where the latter is concerned, some foreign predators, both men and women, are interested solely in sexual relations with boys. There is still a strong taboo surrounding the subject of prostitution of boys, especially where homosexual relations are concerned. In some countries where homosexuality is an offence, a sexually exploited boy under 18 may be punished by law for homosexual relations.

Violence perceived as part of children's upbringing

58. The full extent of violence against children is unknowable, because it most often takes place secretly within the families and no complaint is made. According to the Secretary-General's Study on Violence against Children and to data from the UNICEF Innocenti Research Centre (2006), between 500 million and 1.5 billion children[13] are subjected to violence every year. Often, children who are exposed to violence or are witnesses of acts of violence say nothing for fear of reprisals or exclusion, and many of them accept violence as being part of their lives. Thus, these acts of violence are not always experienced or perceived as such by all. Children respond to them with silence and submission. As a result, violence has a tendency to become normalized.

59. In this context, relationships of force and domination, including those of a sexual nature, may be experienced as "normal" by all parties involved.

[13] UNICEF, *Progress for Children*, 2009.

Recourse to amicable settlement

60. In some regions, particularly rural ones, complaints remain rare. Very few children and families of victims file a complaint, because of ignorance of the law, the financial and geographical difficulties of access to the police and justice services, fear of reprisals, fear of being stigmatized and lack of confidence in judicial procedures.

61. Accordingly, most cases are settled amicably, between the victim's family and the perpetrator, without taking into account the views of the victim. The perpetrators thus get away with making amends in cash or in kind, or by marrying the victim (reparatory marriage).

Summary

62. The influence of certain social norms on the existence and persistence of these phenomena poses, on the one hand, the problem of reconciling social norms, national legislation and international standards, and on the other, that of the failure to apply endogenous protection practices that exist within communities.

(c) The HIV/AIDS pandemic and sexual exploitation of children: a vicious circle

HIV/AIDS makes children more vulnerable to sexual exploitation

63. The number of children in the world[14] aged under 15 is estimated at 2 million, and the number who have lost one or both parents to AIDS at 15 million, of whom the vast majority live in sub-Saharan Africa. A forward-looking study[15] conducted by UNICEF estimates that in 2010, HIV/AIDS will have caused 20 million African children aged under 15 to lose one or both parents.

64. Among the children made vulnerable by the HIV/AIDS epidemic are: children who have lost one or both parents; children who have a sick parent; children who are living in poor households with responsibility for orphans; and children who are themselves seropositive. These children experience severe psychological distress intensified by social stigmatization and discrimination in access to schooling and to care, and are more vulnerable to sale and/or trafficking and to sexual exploitation.

Sexual exploitation of children makes them more vulnerable to HIV/AIDS

65. Child victims of sexual exploitation[16] do not see prevention of HIV/AIDS as a priority because:

- They are ready to do anything to survive;
- They are uninformed or poorly informed about the mode of transmission of HIV/AIDS and the means of prevention;
- They lack ready access to condoms;
- They are unable to negotiate on their own: the adults respond with coercion, the prospect of more money, or false information;

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[14] UNICEF, *The State of the World's Children*, 2009.

[15] UNICEF, *Africa's orphaned generation*, 2003.

[16] ECPAT International, "Confronting the Commercial Sexual Exploitation of Children in Africa", 2007.

- Having a regular clientele gives them reassurance.

66. Moreover, the HIV/AIDS epidemic has led adults to seek sexual relations with increasingly young children, as they have more chance of being healthy.

67. Sex tourism is changing its destinations, choosing countries with a low prevalence rate and thus leading to an increase in the sale and/or trafficking of children for sexual purposes, child prostitution and child pornography in the preferred regions.

(d) Conflict and humanitarian crises

68. According to estimates by UNICEF,[17] slightly more than 1 billion children live in States or territories affected by armed conflict. Nearly 300 million of them are under 5 years of age. In 2006, there were an estimated 18.1 million child refugees and internally displaced persons.

69. Conflicts affect the safety and well-being of the most vulnerable populations, particularly children as they negatively impact on living conditions by exacerbating economic crises, destroy infrastructure and cause massive displacements of people both internally and beyond national borders outside the country. The lack of a family environment, the destruction of social safety-nets, instability and a culture of impunity mean that children are more likely to be subjected to forced labour, sale and trafficking, recruitment into armed forces and armed groups, early marriage or sexual exploitation.

70. Natural disasters, including earthquakes, droughts, floods and tidal waves, cause major population movements, destroy infrastructure and worsen people's living conditions. Women and children are particularly affected. Children who are separated from their families as well as accompanied children, especially in households that are themselves headed by children, no longer possess any official documents and are inevitably at greater risk of economic and sexual exploitation as well as of being sold for illegal adoption.

(e) Ease of access to new technologies

71. In both developed and developing countries, children have easy access to new technologies (at home or at school, in clubs and at Internet cafes).

72. The exponential growth of technology and means of communication, constantly changing patterns of production and consumption, social networks, video sharing, instant messaging and the increasing interactivity of online content offer new opportunities for users but, at the same time, pose new risks for children and young persons. Technological convergence between mobile phones and the Internet has had a major impact on online security. Children are now able to log on to pornographic sites and chat online with sexual predators, and, in this way, may fall victim to sexual exploitation.

(f) Increasing demand and organized crime

73. There is a veritable lucrative market based, on one hand, on the demand for cheap labour, sexual services and children for adoption, and on the other hand on

[17] UNICEF: *Progress for Children*, 2009.

clandestine transnational criminal organizations. Such organizations continue to grow despite the high number of criminal networks which have been dismantled. Thus, networks regulate global supply and demand in what is estimated to be a very lucrative multi-billion dollar market.

74. In many countries, there are infamous preferred locations where children are sold, trafficked and sexually exploited. Sexual predators, those who exploit children and well-structured criminal networks take advantage of child and family vulnerability, facilitated access to children through tourism, the Internet or telecommunications, porous inter-State borders, corruption and loopholes in legislation on protecting children and punishing offenders in accordance with ratified treaties, and on combating corruption.

(g) Increasing vulnerability of families and communities

75. Some families and communities find it increasingly difficult to care for their children. This leads to the breakdown of transgenerational protection mechanisms.

76. Domestic violence, the absence of one or both parents and poverty mean that it is no longer the case that families always constitute a reference point and safe haven for children.

77. Thus children are either left to fend for themselves; entrusted or handed over to third parties; or incorporated into the survival mechanisms of their families, often working from a very early age in order to meet their own needs and the needs of their families. They may even migrate to other cities or countries (with or without the consent of their families).

(h) Vulnerability of certain children

78. Because they are still growing and are dependent on adults, children are vulnerable by nature. They must be trained, brought up, educated, supervised, guided and moulded by their families, guardians and all others who exercise authority over them. However, certain children are more vulnerable than others.

Children not registered at birth

79. Birth registration provides an official record of a child's existence and nationality and is considered a fundamental right under article 7 of the Convention on the Rights of the Child. Birth registration should be free and universal.

80. Nonetheless, the births of nearly 51 million children were not registered in 2007.[18] Children from the poorest households are twice as likely to be unregistered at birth as children from the richest households.

81. Unregistered children have no access to services to which they are entitled, including protection, health care and education. Registering a child's birth is a vital step towards his or her protection. As an official document specifying a child's age, a birth record allows appropriate legal steps to be taken with a view to ensuring that child's protection and penalising offenders in confirmed cases of exploitation or sexual exploitation. Children who possess a birth record are less likely to be sold

[18] Ibid.

than those who do not. In addition, a birth record is an acknowledgement of parentage that can often guard against illegal adoption.

Street children

82. Although their exact numbers are impossible to quantify, it is believed that there are tens of millions of street children. Some estimates put the figure as high as 100 million.[19] It is, moreover, likely that the number of street children will increase in tandem with global population growth and that urbanization will increase at the same pace.

83. The fact is that, to some extent, street children are present in all the world's cities, including the largest and richest cities in the industrialized world.

84. Most street children are not orphans. Many remain in contact with their families and work on the street to augment household income. Others have fled to escape psychological, physical or sexual abuse.

85. Once on the street, children are vulnerable to all forms of exploitation and abuse. Girls who belong to gangs are subject to violence and sexual exploitation by male gang members.

86. In Islamic societies in West and Central Africa, parents entrust their children into the care of a Marabout (religious teacher) so that they may obtain a religious education. This education system is abused and results in the exploitation of children with some Koranic teachers sending children to beg on the streets of big cities where they must collect a certain sum of money each day and provide their own meals.

87. While it may be less obvious, this phenomenon also results in children being sold or trafficked. Talibé boys (religious students) as well as children from rural areas or neighbouring countries are found on the streets of certain major cities.[20] These children, who live on the street and must fend for themselves in very difficult conditions, often fall victim to abuse and sexual exploitation.

Child labourers

88. Despite efforts to combat child labour, UNICEF estimates that 150 million children 5-14 years old worldwide are engaged in child labour.[21] According to ILO estimates, more than two thirds of all child labour is in the agricultural sector. Children in rural areas — and girls in particular — begin agricultural labour as young as 5-7 years old.[22]

89. Domestic labour is one of the most common forms of labour primarily affecting girls. Thousands of out-of-school young girls from disadvantaged backgrounds are placed in household service to supplement family income. These girl domestic workers are often subjected to violence and sexual abuse by employers. Because of their precarious economic situation and fearful of being sent back, these young girls feel obliged to submit to their employers' advances. Those

[19] UNICEF: *State of the World's Children, 2006*: Excluded and Invisible.

[20] UNICEF Innocenti Research Centre: "Trafficking in Human Beings, especially women and children, in Africa", 2005.

[21] UNICEF: *Progress for Children*, 2009.

[22] International Labour Organization, "The end of child labour: Within reach", 2006.

who flee oppression most often end up in the street and get caught up in the spiral of prostitution.

Migrant children

90. According to the World Bank, approximately one third of migrants from developing countries are young persons between the ages of 12 and 24.[23]

91. Such migration, both internal and external, can occur in response to individual imperatives (such as the search for economic or professional opportunities), or to family and communal imperatives in connection with survival strategies or efforts to find suitable social or educational environments for children. Permanent and seasonal migrations, whether cross-border or within a country, are dictated by poverty, deteriorating living conditions, chronic drought, armed conflict and/or political instability.

92. At all stages of migration (origin, transit, destination), migrant children are extremely vulnerable[24] to sale, trafficking and sexual exploitation. Host communities often discriminate against and marginalize migrant children, especially those who are not registered, in particular, by denying them access to education and medical services. Because of their irregular status and their fear of being caught and deported, they are forced to adopt survival strategies, becoming more vulnerable to sexual exploitation and forced labour.

Child victims of trafficking

93. According to some estimates,[25] there could be as many as 1.2 million child victims of trafficking per year. This profitable and well-organized criminal activity (which involves trafficking routes, networks, recruitment via the Internet, fictitious labour contracts, "mail-order brides" and corruption) is fuelled by the demand for children for low-cost labour, sexual exploitation or illegal adoption.

Addictive behaviours among adolescents

94. Around the world, adolescent substance abuse is a growing and alarming phenomenon. The rising — and disturbing — number of adolescents addicted to all types of drugs (including solvents, psychotropic substances, cannabis, heroin, cocaine, crack, Methylenedioxymethamphetamine (MDMA or ecstasy)) and/or to alcohol, forces a large number of them to turn to prostitution to obtain the money to supply their habits.

95. Sexually exploited children and adolescents are often trapped in their situation by drugs. Drugs are used to lure children into the world of the sex industry, and addiction ensures that they will remain there. Dosages are increased to ensure addiction and keep them compliant and incapable of escaping.

96. The risk of HIV infection is very high for these addicted adolescents because of their high-risk sexual behaviour and the sexual exploitation to which they are subjected.

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[23] World Bank, "*World Development Report 2007*".

[24] United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons*, 2009.

[25] UNICEF, *The State of the World's Children 2010*.

Children with disabilities

97. It is difficult to obtain reliable statistics on children with disabilities. A recent World Bank study in nine countries showed that children with disabilities are less likely than other children to enrol and remain in school.[26] Access to health services is also problematic, either because such services are not available or because children are discriminated against and excluded. Their disabilities can make them all the more vulnerable to violence, abuse and sexual exploitation.

Children of minorities

98. Children of minorities have less access to basic social services and protections, and are more vulnerable to sale, trafficking and sexual exploitation.

Institutionalized children

99. UNICEF estimates that over 2 million[27] children around the world are in institutional care, but that is probably a gross underestimate because of the lack of reliable reports and data.

100. Poverty and lack of a family environment are often the cause of institutionalization.

101. In some countries, children under 18 involved in prostitution or pornography cases are considered delinquent and are put in detention centres, detention being regarded as an appropriate way of protecting child victims of sexual exploitation.

102. Many institutions are not registered, and many countries do not have rules and standards to regulate them and do not keep data on institutionalized children. A large number of institutions are handicapped by a lack of qualified human resources and material resources. Supervision and control of such institutions is often haphazard, and with no avenues of recourse, institutionalized children are all the more vulnerable to violence, abuse and sexual exploitation.

Summary

103. Sale and sexual exploitation of children are fuelled by a number of interdependent factors stemming not only from the local or national context in which the child lives and was raised (political, legislative, cultural, environmental, socio-economic and institutional) but also from the global context (tourism, communications technology, the financial crisis, the food crisis and climate change). This multifaceted and complex dimension necessitates an integrated approach with a view to putting in place, with the effective participation of children, genuinely local and national child protection systems that is to say, the coordinated establishment (with community involvement) of a set of social norms, laws, policies and services to guarantee the protection of child victims and children at risk.

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[26] World Bank: Disability, Poverty and Schooling in Developing Countries, 2005.

[27] UNICEF, *Progress for children*, 2009.

C. Activities

104. Numerous national, regional and international efforts to prevent and combat these phenomena have unquestionably achieved some successes in providing protection for children. These include ratifications of conventions and protocols, legislative reforms, action plans, awareness activities and campaigns, the participation of children, child assistance and protection services, dismantling of criminal networks, involvement of the private sector within the context of corporate social responsibility, and regional and international cooperation efforts.

105. Nevertheless, huge disparities persist and many challenges remain with regard to implementation of the recommendations of the various United Nations mechanisms and the Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents.[28]

1. Ratification of relevant regional and international instruments

106. Without a doubt, there has been a steady increase in the number of ratifications of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. To date, 137 States parties have ratified the Optional Protocol. However, when it comes to the goal of ratification of all relevant regional and international instruments by 2013,[29] it should be pointed out that the Optional Protocol has yet to be signed or ratified by 29 countries.

2. Effective implementation of laws guaranteeing the protection of children

107. Numerous legislative reforms have been undertaken. However, despite these efforts, legal gaps persist in many countries. Some national legislation does not clearly define the concept of the sale of children or the legal age of marriage, criminalize all forms of sexual exploitation of children (taking into account the age of sexual consent), provide for free forensic assistance for children and protection and compensation for child victims, and/or establish extraterritorial jurisdiction with respect to all crimes involving the sexual exploitation of children.

108. Law enforcement disparities persist not only between countries but within countries. Access without discrimination to police protection and the justice system, as well as confidentiality, cannot always be ensured owing to lack of material and qualified human resources. Impunity and corruption are rampant. People are not sufficiently familiar with the rights of children and legislation protecting them. Reporting remains inadequate because of taboos, fear of retaliation and stigmatization, and out-of-court settlement.

109. With respect to the establishment by 2013[30] of an effective and accessible system for reporting, follow up and support for child victims of suspected or actual incidents of sexual exploitation, many countries do not yet have such a system.

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[28] Third World Congress against Sexual Exploitation of Children and Adolescents (Rio de Janeiro, November 2008).

[29] Rio Declaration and Call for Action, 2008.

[30] Ibid.

3. Implementation of integrated and intrasectoral strategies for prevention and for the protection, reintegration and follow-up of children

110. While a large number of action plans and strategies have been developed, they are very often only partially or incompletely implemented in some countries owing to:

- Weak capacities of the institutions responsible for the design, implementation and monitoring of action plans and strategies;
- Inadequate human resources in terms of both quantity and quality;
- Inadequate budget allocations, for which they often rely on development partners to some extent;
- Multiple sectoral action plans, leading to duplication, and lack of rational and optimal use of resources;
- Low level or absence of consultation and synergy among various actors and departments;
- Shortage or absence of centralized information systems and monitoring and assessment mechanisms through which to measure changes in the situation of children and the impact of actions undertaken.

111. With respect to the delivery of medical, psychological and social care and the reintegration and follow-up of child victims, many services have been put in place, but in some countries these activities are geographically limited and the capacity to provide care and follow-up to children and support to families remains inadequate. Moreover, a large number of children's shelters are not governed by the standards and norms of child protection and are not subject to regular monitoring.

112. With respect to prevention, numerous awareness-raising campaigns have been conducted and information tools have been developed. However, awareness-raising often remains sporadic, messages are not always geared towards the target audience and their impact is not measured.

113. Much remains to be done in the areas of protection of children at risk, access without discrimination by children and vulnerable groups to basic infrastructure and basic social and economic services, the strengthening of community protection mechanisms and the promotion of protective social norms.

4. Participation of children

114. Although the participation of children has gained increased visibility, progress must still be made on:

- Children's access to information and freedom of expression and association;
- Taking the opinions of child victims into account;
- Representation of children without discrimination of any kind in such bodies as parliaments, councils and committees on children;
- Use of the participatory approach by all agencies and individuals who work with children.

115. Children's participation should be made systematic throughout the process of developing, implementing and monitoring child protection strategies, for children are not only victims, they are also part of the solution.

5. Corporate social responsibility

116. With respect to corporate social responsibility, a large number of businesses have adopted codes of conduct or have launched or supported information and awareness programmes. Some States have adopted legislation on the accountability of Internet access providers, telecommunications companies and banks.

117. It would be useful to encourage and expand these initiatives, which would make it possible to incorporate child protection into the social responsibility policies of tourism, travel, transportation, agriculture, financial services, communications, media, Internet services, advertising and entertainment and other businesses.

6. Enhancing international cooperation

118. Numerous transnational actions are being undertaken, including cooperation among police forces to facilitate the exchange of information and expertise and the provision of technical and financial support to developing countries. These mechanisms and/or processes that facilitate coordination at the national, regional and international levels should be enhanced and expanded, particularly given that, owing to the development of information technologies, trafficking networks, tourism and migration, the sale and sexual exploitation of children transcend national boundaries.

7. Monitoring and assessment

119. Concerning the establishment by 2013 of mechanisms for the promotion and protection of the rights of the child, taking into account general comment No. 2 of the Committee on the Rights of the Child, some countries have mechanisms in place, but many others still do not have such mechanisms. These mechanisms should be enhanced where they already exist and should be put in place where necessary. Their role is to ensure the protection of children, the restitution of their rights, independent monitoring of the strategies and policies being implemented and advocacy for the strengthening of legal frameworks and, where necessary, to ensure that child victims have appropriate legal remedies, including the possibility of filing complaints.

Summary

120. States have taken some measures to implement the Optional Protocol. There has been a substantial increase in the number of initiatives taken at the international, regional and national levels by the private and public sectors, non-governmental organizations and agencies, often in cooperation, to prevent and combat the sale and sexual exploitation of children. Nevertheless, many challenges remain with respect to gauging the full scope of these offences, preventing them and providing effective protection to children.

D. Recommendations

1. Re-evaluation of approaches adopted

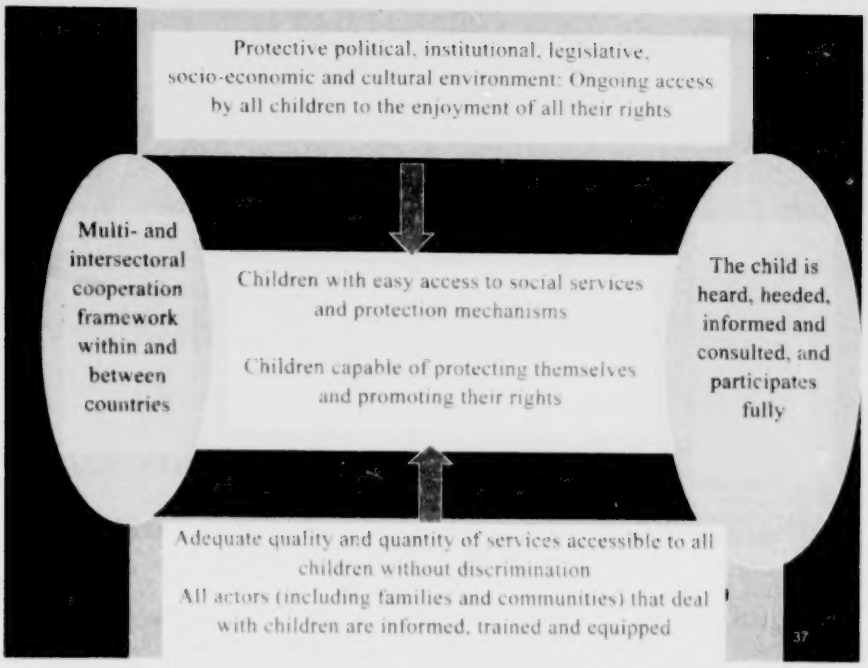
121. In order to remedy the inadequacies observed and to guarantee the effective and efficient protection of all children who are victims or at risk of sale and/or sexual exploitation, new approaches must be adopted that are informed by objective realities and the complexity of these phenomena.

122. To that end, there must be a shift away from the juxtaposition of sectoral actions towards the adoption of a child protection strategy aimed at establishing protection systems and based on:

- The guiding principles of the Convention on the Rights of the Child: the best interests of the child; the child's right to survival, life and development; non-discrimination; and the participation of the child;
- A child rights approach in which children have rights and all other actors who deal with children have obligations (the principle of accountability);
- A cross-cutting, integrated and coordinated approach as the basis for a genuine chain of protection in which interrelated and complementary actions are undertaken by a series of actors at the local, national and transnational levels;
- Taking into account the views and opinions of children, who are stakeholders in the solutions being sought for the protection and promotion of their rights.

123. This approach will make it possible to:

- better understand and grasp the multidimensional nature of these phenomena and the vulnerabilities of certain groups of children;
- develop and implement sustainable and context-specific strategies for the prevention of the sale and sexual exploitation of children and for the protection of children;
- decentralize these strategies by establishing local services that are easily accessible to all children and guarantee them ongoing access to the enjoyment of all their rights.

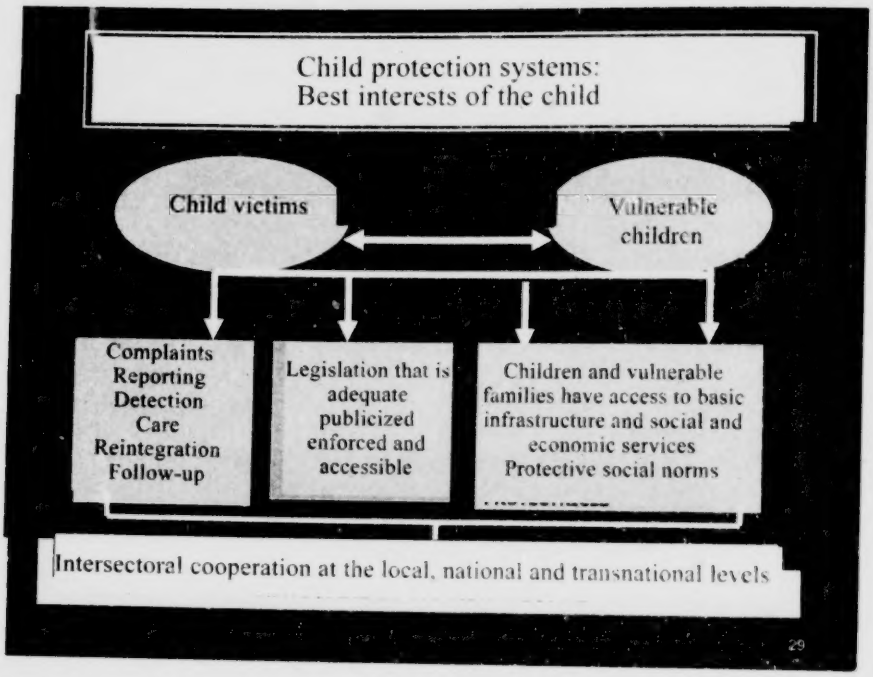

Protective political, institutional, legislative, socio-economic and cultural environment: Ongoing access by all children to the enjoyment of all their rights
Multi- and intersectoral cooperation framework within and between countries
Children with easy access to social services and protection mechanisms
Children capable of protecting themselves and promoting their rights
The child is heard, heeded, informed and consulted, and participates fully
Adequate quality and quantity of services accessible to all children without discrimination
All actors (including families and communities) that deal with children are informed, trained and equipped
37

124. The implementation of protection systems is first and foremost a process that is based on:

- Full acceptance by all actors of the child-rights-based programming approach and the principles involved;
- Concerted and effective national, regional and international cooperation, in view of the multi- and intersectoral dimensions, both national and international, of the sale of children, child prostitution and child pornography.

2. Effective implementation and monitoring of recommendations

125. Establishing protection systems that safeguard the best interests of the child and cover (i) prevention; (ii) detection, and the care and medical, psychological, social and legal follow-up of the child; and (iii) the promotion of the rights of the child will help to ensure the implementation and monitoring of the recommendations of the Committee on the Rights of the Child, special procedures and the Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents.



126. The implementation of such systems relies on the following:

- Ratification of the second Optional Protocol and other relevant international and regional instruments by those countries that have not yet done so;
- A protective legislative framework: legislation that is harmonized with the ratified instruments and that guarantees the protection of children and criminalizes these offences; legislation that is publicized and enforced; police and legal services that are accessible without discrimination and that guarantee protection and confidentiality; and properly trained judges and police officers;
- A protective institutional framework: accessible detection and reporting mechanisms and mechanisms for the support and follow-up of children; social services that are accessible to children and families; services for the care, reintegration and follow-up of child victims that meet the standards and norms; proper training for agencies and individuals that deal with children; and efficient inter- and intrasectoral coordination mechanisms;
- A protective socio-economic framework: access to basic infrastructure, social services and economic support for vulnerable families and communities; adequate care and follow-up of vulnerable children; and the inclusion of child protection in local development policies;
- A protective sociocultural framework: promotion of protective social norms; identification and enhancement of endogenous community mechanisms for protection; informing and mobilizing children, families and communities for child protection;

- A reliable standardized information system: adoption of a rigorous method to gather and process disaggregated data; and intersectoral and transnational exchange of information;

- A mechanism for the promotion and protection of the rights of the child, taking into account general comment No. 2 of the Committee on the Rights of the Child: monitoring of changes in the situation of child rights; and monitoring of actions undertaken and evaluation of their impact;

- Corporate social responsibility that is enhanced and extended to various sectors (tourism, travel, transportation, agriculture, financial services, media, Internet and telecommunications): adoption of a code of conduct; support for action on prevention and protection through public-private partnerships;

- Systematic participation by children: access to information and means of expression for all children without discrimination; empowerment (capacity-building) of children; representation of vulnerable children in children's forums; actors and children properly trained in the participatory approach; and participation throughout the process of developing, implementing and monitoring child protection strategies;

- An international cooperation framework governing effective and coordinated mobilization of all stakeholders; exchange of information and expertise between police forces and justice systems; development and sharing of practices; harmonization of practices and tools; and ongoing technical and financial support for protection programmes.